

9D-DW-19892  
PATENT

### REMARKS

The Office Action mailed February 17, 2004 has been carefully reviewed and the foregoing amendments have been made in consequence thereof.

Claims 1, 3-17, 21, and 22 are now pending in this application. Claims 1, 3-17, 21, and 22 stand rejected. Claims 1, 8, and 21 are amended.

The specification has been amended to correct clerical errors and for consistency with the drawings, Figures 4-6. Specifically, paragraph 27 has been amended to describe the curved arch portion as tapering from the heel portion to the toe portion. Paragraph 29 has been amended to correct clerical errors. No new matter has been added by this amendment.

The undersigned wishes to thank Examiner Redman for the courtesies extended in a telephonic interview on March 23, 2004, in which the independent claims 1, 8, 14, and 21 were discussed with respect to language that better describes the mounting portions of the seal and door panel formation, and distinguishes over the art of record. The language discussed is incorporated into the amendments of Claims 1, 8, and 21. It was acknowledged that Claim 14 is distinguishable over the current art of record. It was also clarified that the presently pending Office Action is a non-final action.

The rejection of Claims 1 and 3-17 under 35 U.S.C. § 103(a) as being unpatentable over Bertsch et al. (U.S. Patent No. 5,115,826) in view of Japanese Patent No. 54-42833 is respectfully traversed.

Bertsch et al. describe a dishwasher door (14) including a lower extension (34) extending into a tub (28) of a dishwasher (10). Door extension (34) extends below the level of spraying in tub (28) to prevent leakage caused by spraying of the cleaning fluid. A spatter shield (40) is attached to a projecting rib or flange (42) on a side of the door opposite a fluid receiving

9D-DW-19892  
PATENT

chamber (32). Shield (40) includes a slot (44) for receiving rib (42). Shield (40) tends to block a path of spatter over an edge (30) of tub (28) and is a tortuous path-type fluid seal. Shield (40) is behind an inner door (24) during spraying of cleaning fluid and outside of chamber (32) when door (14) is opened. The shield (40) includes a flange (46) and channel (48) that tend to deflect spatter from tub (28) to return the spatter to tub (28) through a space (36) between a wall of tub (28) and door lower extension (34). Bertsch et al. col. 3, line 63 to col. 4, line 50. As illustrated in the Figures, the door rib (42) extends inwardly from inner door in a substantially perpendicular fashion from the door inner wall and includes opposite flat sides. The rib (42) is fitted into a U-shaped slot (44) that includes inclined teeth (58) for retention of tab (52).

Japanese Patent No. 54-42833, as best understood, describes flexible packings (1) that include throating grooves (8) on the outer circumference of the packings (1). The packing is attached to the circumference of a box (2) or door (3) to provide an airtight seal around the box opening.

Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to combine the teachings of Bertsch et al. with the teachings of Japanese patent 54-42833. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention absent some teaching, suggestion, or incentive supporting the combination. Neither Bertsch et al. nor Japanese patent 54-42833, alone or in combination, describe or suggest the claimed combination. Rather, the present Section 103 rejection appears to be based on a combination of teachings selected from multiple patents in an attempt to arrive at the claimed invention. Specifically, Bertsch et al. is cited for teaching of a dishwasher door panel with a spatter shield, and Japanese patent 54-42833 is cited for its teaching of a storage box with an airtight seal. Since there is no teaching or suggestion in the cited art of the claimed combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated

9D-DW-19892  
PATENT

disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicants respectfully request that the Section 103 rejection of Claims 1 and 3-17 be withdrawn.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. *Ex parte Levensgood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. *In re Vaeck*, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion nor motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Claim 1 recites a door panel assembly for a dishwasher including "a panel comprising a formation depending therefrom, said formation comprising a boot-shaped portion defining a heel portion, a toe portion substantially perpendicular to said heel portion, and a curved arch portion tapering from said heel portion to said toe portion; and a seal member comprising a head portion and an opening therein complementary in shape to said formation, said formation received in said opening, said heel portion and said toe portion cooperating to retain said seal member".

Neither Bertsch et al. nor Japanese patent 54-42833, considered alone or in combination, describe or suggest a door panel assembly for a dishwasher including a panel having a formation depending therefrom, the formation including a boot-shaped portion defining a heel portion, a toe portion substantially perpendicular to the heel portion, and a curved arch portion tapering from the heel portion to the toe portion, and a seal member including a head portion and an opening therein complementary in shape to the formation, wherein the formation is received in the opening, and wherein the heel portion and the toe portion cooperate to retain the seal member. Moreover, neither Bertsch et al. nor Japanese patent 54-42833, considered alone or in combination, describe or suggest a formation wherein a curved arch portion tapers from a heel

9D-DW-19892  
PATENT

portion to a toe portion. Rather, Bertsch et al. describe a spatter shield mounted on a rib, and Japanese patent 54-42833 describes flexible packing without a taper between heel and toe portions.

For the reasons set forth above, Claim 1 is submitted to be patentable over Bertsch et al. in view of Japanese patent 54-42833.

Claims 3-7 depend from independent Claim 1. When the recitations of Claims 3-7 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 3-7 likewise are patentable over Bertsch et al. in view of Japanese patent 54-42833.

Claim 8 recites a door panel assembly for a dishwasher, the door panel assembly including "an inner door panel comprising a formation extending therefrom, said formation comprising at least one flat surface and a curved surface extending opposite said flat surface, said at least one flat surface defining a heel portion extending beyond said curved surface, said curved surface tapering to a toe portion; and a seal member comprising a head portion and an opening therethrough, said opening complimentary in shape to said formation and receiving said formation and attaching said seal member to said formation".

Neither Bertsch et al. nor Japanese patent 54-42833, considered alone or in combination, describe or suggest a door panel assembly for a dishwasher, the door panel assembly including an inner door panel that includes a formation extending therefrom, the formation including at least one flat surface and a curved surface extending opposite the flat surface, the at least one flat surface defining a heel portion extending beyond the curved surface, the curved surface tapering to a toe portion, and a seal member comprising a head portion and an opening therethrough, the opening complimentary in shape to the formation and receiving the formation and attaching the seal member to the formation. Moreover, neither Bertsch et al. nor Japanese patent 54-42833, considered alone or in combination, describe or suggest a formation wherein a curved surface tapers from a heel portion to a toe portion. Rather, Bertsch et al. describe a spatter shield

9D-DW-19892  
PATENT

mounted on a rib, and Japanese patent 54-42833 describes flexible packing without a taper between heel and toe portions.

For the reasons set forth above, Claim 8 is submitted to be patentable over Bertsch et al. in view of Japanese patent 54-42833.

Claims 9-13 depend from independent Claim 8. When the recitations of Claims 9-13 are considered in combination with the recitations of Claim 8, Applicants submit that dependent Claims 9-13 likewise are patentable over Bertsch et al. in view of Japanese patent 54-42833.

Claim 14 recites a door panel assembly comprising "a panel comprising a bottom portion, a formation extending therefrom, and a barrier portion extending therefrom in a spaced apart relationship to said formation" and "a seal member comprising a head portion and a flap portion extending from said head portion and contacting a distal end of said barrier portion, said head portion comprising an opening therethrough for receiving said formation, said head portion engaged to said formation".

Neither Bertsch et al. nor Japanese patent 54-42833, considered alone or in combination, describe or suggest a door panel assembly comprising a panel comprising a bottom portion, a formation extending therefrom, and a barrier portion extending therefrom in a spaced apart relationship to said formation; and a seal member comprising a head portion and a flap portion extending from said head portion and contacting a distal end of said barrier portion, said head portion comprising an opening therethrough for receiving said formation, said head portion engaged to said formation. Moreover, neither Bertsch et al. nor Japanese patent 54-42833, considered alone or in combination, describe or suggest a door panel having a formation and a barrier portion extending therefrom and wherein a seal member on the formation contacts a distal end of the barrier portion, both the seal and the barrier portion being on the door panel. Rather, Bertsch et al. describe a spatter shield having a flap portion that contacts nothing (see Figs. 3 and

9D-DW-19892  
PATENT

4), and Japanese patent 54-42833 describes a box with a seal attached to the box wall and having a flap that contacts the door.

For the reasons set forth above, Claim 14 is submitted to be patentable over Bertsch et al. in view of Japanese patent 54-42833.

Claims 15-17 depend from independent Claim 14. When the recitations of Claims 15-17 are considered in combination with the recitations of Claim 14, Applicants submit that dependent Claims 15-17 likewise are patentable over Bertsch et al. in view of Japanese patent 54-42833.

For at least the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 1 and 3-17 be withdrawn.

The rejection of Claims 21 and 22 under 35 U.S.C. § 102(a) as being anticipated by Japanese Patent No. 54-42833 is respectfully traversed.

Japanese Patent No. 54-42833 is described above.

Claim 21 recites a seal including "a head portion and a flap portion extending from said head portion, said head portion defining a boot-shaped opening having a heel portion, a toe portion angularly displaced from said heel portion, and a curved arch portion tapering from said heel portion to said toe portion".

Japanese patent 54-42833 neither describes nor suggests a seal including a head portion and a flap portion extending from the head portion, the head portion defining a boot-shaped opening having a heel portion, a toe portion angularly displaced from the heel portion, and a curved arch portion tapering from the heel portion to the toe portion. Moreover, Japanese patent 54-42833 does not describe or suggest a curved arch portion tapering from a heel portion to a toe portion. Rather, the Japanese patent describes an L-shaped portion not having a taper.

9D-DW-19892  
PATENT

For the reasons set forth above, Claim 21 is submitted to be patentable over Japanese patent 54-42833.

Claim 22 depends from independent Claim 21. When the recitations of Claims 22 are considered in combination with the recitations of Claim 21, Applicants submit that dependent Claim 22 is likewise are patentable over Japanese patent 54-42833.

For at least the reasons set forth above, Applicants respectfully request that the Section 102 rejection of Claims 21 and 22 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



Thomas M. Fisher  
Registration No. 47,564  
ARMSTRONG TEASDALE LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
(314) 621-5070